

THE HONORABLE BARBARA J. ROTHSTEIN

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

MICHELE KING,

Plaintiff,

v.

THE PORT OF SEATTLE,

Defendant.

NO. 2:19-cv-01878-BJR

**STIPULATED PROTECTIVE  
ORDER**

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. "CONFIDENTIAL" MATERIAL

"Confidential" material shall include the following documents and tangible things produced or otherwise exchanged: personnel files, protected health information, other identifying, financial, and personal information of current and/or former employees and/or

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FOSTER GARVEY PC  
1111 THIRD AVENUE, SUITE 3000  
SEATTLE, WASHINGTON 98101-3296  
PHONE (206) 447-4400 FAX (206) 447-9700

tenants of the Port of Seattle, Sensitive Security Information as defined by Federal regulation, and proprietary business and/or competitive strategy information of the Port of Seattle.

3. SCOPE

The protections conferred by this agreement cover not only confidential material (as defined above), but also (1) any information copied or extracted from confidential material; (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony, conversations, or presentations by parties or their counsel that might reveal confidential material.

However, the protections conferred by this agreement do not cover information that is in the public domain or becomes part of the public domain through trial or otherwise.

4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

4.1 Basic Principles. A receiving party may use confidential material that is disclosed or produced by another party or by a non-party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Confidential material may be disclosed only to the categories of persons and under the conditions described in this agreement. Confidential material must be stored and maintained by a receiving party at a location and in a secure manner that ensures that access is limited to the persons authorized under this agreement.

4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the court or permitted in writing by the designating party, a receiving party may disclose any confidential material only to:

(a) the receiving party's counsel of record in this action, as well as employees of counsel to whom it is reasonably necessary to disclose the information for this litigation;

(b) the officers, directors, and employees (including in house counsel) of the receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties agree that a particular document or material produced is for Attorney's Eyes Only and is so designated;

(c) experts and consultants to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the court, court personnel, and court reporters and their staff;

(e) copy or imaging services retained by counsel to assist in the duplication of confidential material, provided that counsel for the party retaining the copy or imaging service instructs the service not to disclose any confidential material to third parties and to immediately return all originals and copies of any confidential material;

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal confidential material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this agreement;

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

4.3 Filing Confidential Material. Before filing confidential material or discussing or referencing such material in court filings, the filing party shall confer with the designating party, in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. During the meet and confer process, the designating party must identify the basis for sealing the specific confidential information at issue, and the filing party shall include this basis in its motion to seal, along with any objection to sealing the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal. A party who seeks to maintain the confidentiality of its information must

1 satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion  
 2 to seal. Failure to satisfy this requirement will result in the motion to seal being denied, in  
 3 accordance with the strong presumption of public access to the Court's files.

4 5. DESIGNATING PROTECTED MATERIAL

5 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party  
 6 or non-party that designates information or items for protection under this agreement must take  
 7 care to limit any such designation to specific material that qualifies under the appropriate  
 8 standards. The designating party must designate for protection only those parts of material,  
 9 documents, items, or oral or written communications that qualify, so that other portions of the  
 10 material, documents, items, or communications for which protection is not warranted are not  
 11 swept unjustifiably within the ambit of this agreement.

12 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
 13 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to  
 14 unnecessarily encumber or delay the case development process or to impose unnecessary  
 15 expenses and burdens on other parties) expose the designating party to sanctions.

16 If it comes to a designating party's attention that information or items that it designated  
 17 for protection do not qualify for protection, the designating party must promptly notify all other  
 18 parties that it is withdrawing the mistaken designation.

19 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
 20 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or  
 21 ordered, disclosure or discovery material that qualifies for protection under this agreement must  
 22 be clearly so designated before or when the material is disclosed or produced.

23 (a) Information in documentary form: (*e.g.*, paper or electronic documents  
 24 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial  
 25 proceedings) the designating party must affix the word "CONFIDENTIAL" to each page that  
 26 contains confidential material. If only a portion or portions of the material on a page qualifies for

1 protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by making  
2 appropriate markings in the margins).

3 (b) Testimony given in deposition or in other pretrial proceedings: the parties  
4 and any participating non-parties must identify on the record, during the deposition or other  
5 pretrial proceeding, all protected testimony, without prejudice to their right to so designate other  
6 testimony after reviewing the transcript. Any party or non-party may, within fifteen days after  
7 receiving the transcript of the deposition or other pretrial proceeding, designate portions of the  
8 transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect  
9 confidential information at trial, the issue should be addressed during the pre-trial conference.

10 (c) Other tangible items: the producing party must affix in a prominent place  
11 on the exterior of the container or containers in which the information or item is stored the word  
12 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,  
13 the producing party, to the extent practicable, shall identify the protected portion(s).

14 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
15 designate qualified information or items does not, standing alone, waive the designating party’s  
16 right to secure protection under this agreement for such material. Upon timely correction of a  
17 designation, the receiving party must make reasonable efforts to ensure that the material is treated  
18 in accordance with the provisions of this agreement.

## 19 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

20 6.1 Timing of Challenges. Any party or non-party may challenge a designation of  
21 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality  
22 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
23 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
24 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
25 original designation is disclosed.  
26

6.2 Meet and Confer. The parties must make every attempt to resolve any dispute regarding confidential designations without court involvement. Any motion regarding confidential designations or for a protective order must include a certification, in the motion or in a declaration or affidavit, that the movant has engaged in a good faith meet and confer conference with other affected parties in an effort to resolve the dispute without court action. The certification must list the date, manner, and participants to the conference. A good faith effort to confer requires a face-to-face meeting or a telephone conference.

6.3 Judicial Intervention. If the parties cannot resolve a challenge without court intervention, the designating party may file and serve a motion to retain confidentiality under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of persuasion in any such motion shall be on the designating party. Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties) may expose the challenging party to sanctions. All parties shall continue to maintain the material in question as confidential until the court rules on the challenge.

## 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party must:

- (a) promptly notify the designating party in writing and include a copy of the subpoena or court order;
- (b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and
- (c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

1     8.     UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2             If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential  
3 material to any person or in any circumstance not authorized under this agreement, the receiving  
4 party must immediately (a) notify in writing the designating party of the unauthorized  
5 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,  
6 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of  
7 this agreement, and (d) request that such person or persons execute the “Acknowledgment and  
8 Agreement to Be Bound” that is attached hereto as Exhibit A.

9     9.     INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
10 MATERIAL

11            When a producing party gives notice to receiving parties that certain inadvertently  
12 produced material is subject to a claim of privilege or other protection, the obligations of the  
13 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
14 provision is not intended to modify whatever procedure may be established in an e-discovery  
15 order or agreement that provides for production without prior privilege review. The parties agree  
16 to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

17     10.    NON TERMINATION AND RETURN OF DOCUMENTS

18            Within 60 days after the termination of this action, including all appeals, each receiving  
19 party must return all confidential material to the producing party, including all copies, extracts  
20 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of  
21 destruction.

22            Notwithstanding this provision, counsel are entitled to retain for a period of seven years,  
23 one archival copy of all documents including but not limited to documents filed with the court,  
24 trial, deposition, and hearing transcripts, correspondence, deposition and trial exhibits, expert  
25 reports, attorney work product, and consultant and expert work product, even if such materials  
26 contain confidential material.

1 The confidentiality obligations imposed by this agreement shall remain in effect until a  
2 designating party agrees otherwise in writing or a court orders otherwise.

3  
4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

5  
6 DATED: 4/3/2020

FOSTER GARVEY PC

7 By /s/ Diana S. Shukis

8 Diana S. Shukis, WSBA #29716  
9 Kelly A. Mennemeier, WSBA #51838  
10 1111 Third Avenue, Suite 3000  
11 Seattle, WA 98101  
12 Phone: (206) 447-4400  
13 Facsimile: (206) 447-9700  
14 Diana.shukis@foster.com  
15 Kelly.mennemeier@foster.com

*Attorneys for Defendant Port of Seattle*

14  
15 DATED: 4/3/2020

BLOOM LAW PLLC

16 By /s/ Beth Barrett  
17 Bloom

18 Beth Barrett Bloom, WSBA #31702  
19 Rory O'Sullivan, WSBA #38487  
20 3827-C South Edmunds St.  
21 Seattle, WA 98118  
22 Phone: (206) 323-0409  
23 bbloom@bloomlawpllc.com  
24 rosullivan@bloomlawpllc.com

*Attorneys for Plaintiff Michele King*



EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
 \_\_\_\_\_ [print or type full address], declare under penalty  
 of perjury that I have read in its entirety and understand the Stipulated Protective Order that was  
 issued by the United States District Court for the Western District of Washington on [date] in the  
 case of *Michele King v. Port of Seattle*, Western District of Washington Case No. 2:19-cv-01878.  
 I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I  
 understand and acknowledge that failure to so comply could expose me to sanctions and  
 punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner  
 any information or item that is subject to this Stipulated Protective Order to any person or entity  
 except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the  
 Western District of Washington for the purpose of enforcing the terms of this Stipulated  
 Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_

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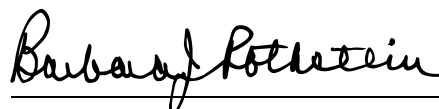
FOSTER GARVEY PC  
 1111 THIRD AVENUE, SUITE 3000  
 SEATTLE, WASHINGTON 98101-3296  
 PHONE (206) 447-4400 FAX (206) 447-9700

**ORDER**

PURSUANT TO STIPULATION, IT IS SO ORDERED

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any documents in this proceeding shall not, for the purposes of this proceeding or any other federal or state proceeding, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law.

DATED: April 22, 2020



Barbara Jacobs Rothstein  
U.S. District Court Judge

**CERTIFICATE OF SERVICE**

I, McKenna Filler, hereby certify that on April 3<sup>rd</sup>, 2020, caused the foregoing Notice of Appearance to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

DATED at Seattle, Washington, this 3<sup>rd</sup> day of April, 2020.

/s/McKenna M. Filler

McKenna M. Filler, Legal Assistant  
Foster Garvey  
1111 Third Avenue, #3000  
Seattle, WA 98101  
(206) 447-4400  
[mckenna.filler@foster.com](mailto:mckenna.filler@foster.com)

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FOSTER GARVEY PC  
1111 THIRD AVENUE, SUITE 3000  
SEATTLE, WASHINGTON 98101-3296  
PHONE (206) 447-4400 FAX (206) 447-9700